

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Case No. CR-09-149-C
)	
JOSEPH MATTHEWS MERENDA,)	
)	
Defendant.)	

MEMORANDUM OPINION AND ORDER

Defendant has filed an Amended Motion to Modify Sentence and to Extend Time to Report (Dkt. No. 189). In his motion, Defendant requests sentence modification pursuant to Federal Rule of Criminal Procedure 35(a), arguing that his sentence resulted from arithmetical, technical, or other error. In his motion, Defendant notes that his counsel failed to properly prepare and present evidence to the Court which would have resulted in a different sentence and a different determination of the amount of restitution to be paid.

As Plaintiff notes, Defendant's request is simply beyond the scope of Rule 35(a). Rule 35(a) exists only to correct clear error or mistake that has occurred in forming the sentence. Here, Defendant's arguments are more akin to a claim of ineffective assistance of counsel which is properly pursued only pursuant to a habeas action under 28 U.S.C. § 2255. Of course, as Plaintiff notes, the appellate waiver entered into as part of the plea agreement may well play a role in Defendant's ability to pursue his claim via that avenue. Regardless,

the requested relief sought by Defendant at this stage is beyond the scope of the Court's authority and therefore his request for modification of his sentence will be denied.

As for Defendant's request to extend the date on which he is to report to begin his imprisonment, the Court finds no sufficient reason set forth by Defendant to alter the currently scheduled date. While Defendant has supplemented the information presented with a letter apparently confirming his approval as lead underwriter for a business transaction, the letter contains no information about when any commission might accrue, or whether someone could act on Defendant's behalf. Accordingly, Defendant is to report no later than 12:00 noon August 26, 2011.

For the reasons set forth herein, Defendant's Amended Motion to Modify Sentence and to Extend Time to Report (Dkt. No. 189) is DENIED.

IT IS SO ORDERED this 25th day of August, 2011.


ROBIN J. CAUTHRON
United States District Judge